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10/694,349

10/28/2003

Wolfgang Lubcke

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625 SLATERS LANE

FOURTH FLOOR

ALEXANDRIA, VA 22314-1176

EXAMINER

KOVAL, MELISSA J

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG LUBCKE, PETER GERST, and JEAN-GYL CAPT

Appeal 2009-010439
Application 10/694,349¹
Technology Center 2800

Before ROBERT E. NAPPI, MARC S. HOFF, and BRADLEY W.
BAUMEISTER, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-12.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest is Endress + Hauser GmbH +Co.

² Claims 19-39 stand withdrawn as directed to a nonelected invention. Claims 13-18 have been cancelled.

Appellants' invention concerns a measuring instrument to be connected to a higher-order unit via a first pair of lines and a second pair of lines. During operation, a signal current flows via said first pair of lines, and a supply current flows via said second pair of lines. The supply current and at least a portion of the signal current are available to supply the measuring instrument (Spec. 3).

Claim 1 is exemplary of the claims on appeal:

1. A measuring arrangement comprising: a measuring instrument and a higher-order unit, said measuring instrument and said higher-order unit being electrically connected with each other by a first pair of lines and a second pair of lines, wherein during operation a signal current flows via said first pair of lines and a supply current flows via said second pair of lines, said signal current representing an instantaneous measured value, and said supply current and at least a portion of the signal current supply said measuring instrument.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Venditti	US 5,248,933	Sep. 28, 1993
Wetzel	US 5,742,225	Apr. 21, 1998
Schmidt	US 5,940,774	Aug. 17, 1999
Belforte	US 6,194,909 B1	Feb. 27, 2001

Claims 1, 6, and 10-12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Venditti.

Claims 2, 8, and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Venditti in view of Wetzel.

Claims 3-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Venditti in view of Schmidt.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Venditti in view of Belforte.

Throughout this decision, we make reference to the Appeal Brief (“App. Br.,” filed July 6, 2006), the Reply Brief (“Reply Br.,” filed August 27, 2007), and the Examiner’s Answer (“Ans.,” mailed June 26, 2007) for their respective details.

ISSUE

With respect to claims 1, 6, and 10-12, Appellants argue that the Examiner erred in rejecting the claims as being anticipated by Venditti, in that Venditti does not teach the “supply current and at least a portion of the signal current . . . ‘supply[ing] said measuring instrument’” (App. Br. 4-5). Appellants argue that the claim language means that the measuring instrument is *powered* using the supply current and at least a portion of the signal current. By contrast, the Examiner finds that because claim 1 makes no mention regarding powering a measuring instrument, Venditti’s supply current (power+, power-) flowing into and out of the measuring instrument, and its signal current (Signal 1, Signal 2) flowing into the measuring instrument together meet the claim limitation at issue (Ans. 8-9; Venditti Fig. 10).

With respect to claims 3-5, Appellants argue that the claimed transmitter feed units are “not apparent from Schmidt” (App. Br. 6).

Appellants’ contentions, and the Examiner’s findings, present us with the following issues:

1. Does Venditti teach that the supply current and at least a portion of the signal current supply the measuring instrument?
2. Does Schmidt teach at least two transmitter feed units, each operable to supply a conventional two-wire measuring instrument with electrical power?

PRINCIPLES OF LAW

Anticipation pursuant to 35 U.S.C § 102 is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

Section 103(a) forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’

KSR Int’l Co. v. Teleflex, Inc., 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences

between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations.

Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407, (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments that the Examiner has erred. We disagree with Appellants’ conclusions. We concur with the findings and reasons set forth by the Examiner in the action from which this appeal is taken and the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellants’ Appeal Brief. However, we highlight and address specific findings and arguments for emphasis, as follows.

CLAIMS 1, 6, AND 10-12

We select claim 1 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

We are not persuaded by Appellants’ argument that Venditti does not teach a supply current and at least a portion of the signal current supplying the measuring instrument. We agree with the Examiner that Fig. 10 of Venditti discloses a first and second pair of lines, a “supply current” flowing

via one pair (POWER+, POWER-), and a “signal current” flowing via the other pair (SIGNAL 1, SIGNAL 2). We agree with the Examiner’s finding that both pairs of lines in Venditti flow into measuring instrument 20, thus “supplying” the measuring instrument (Ans. 8-9). Appellants’ argument that the claim language requires the measuring instrument to be powered by “said supply current and at least a portion of the signal current” is not persuasive because it is wholly unsupported by evidence. Appellants have neither established that the Specification requires such an interpretation, nor cited any extrinsic source tending to show that “[t]o supply is to power” (Reply Br. 2).

We find that the Examiner did not err in finding that Venditti teaches all the limitations of representative claim 1. Accordingly, we will sustain the § 102 rejection of claims 1, 6, and 10-12 as being anticipated by Venditti.

CLAIMS 2, 8, AND 9

Appellants argue that Wetzel does not remedy the perceived deficiency of Venditti, in that “Wetzel et al does not teach the powering feature noted above” (App. Br. 5). Because we find that Venditti does teach the claimed “supply” to the measuring instrument, we are not persuaded by Appellants’ argument.

We therefore find that the Examiner did not err in rejecting claims 2, 8, and 9 under § 103 over Venditti in view of Wetzel. We will sustain the Examiner's rejection.

CLAIMS 3-5

We select claim 3 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' argument that "the transmitter feed units ... are not apparent from Schmidt" (App. Br. 6) is not persuasive. We agree with the Examiner's finding that the Tx/Rx Processing units of Schmidt correspond to the claimed transmitter feed units (Ans. 7).

We therefore find that the Examiner did not err in rejecting claims 3-5 under § 103 over Venditti in view of Schmidt. We will sustain the Examiner's rejection.

CLAIM 7

We regard to Appellants' argument that Belforte "lacks the necessary teaching to assist [sic] Venditti when considering claim 1, from which claim 7 depends" (App. Br. 6) as an argument that Belforte does not remedy the asserted deficiencies of Venditti. As with claims 2, 8, and 9 *supra*, because we find that Venditti does teach the claimed "supply" to the measuring instrument, we are not persuaded by Appellants' argument.

We therefore find that the Examiner did not err in rejecting claim 7 under § 103 over Venditti in view of Belforte. We will sustain the Examiner's rejection.

CONCLUSION

1. Venditti teaches that the supply current and at least a portion of the signal current supply the measuring instrument.
2. Schmidt teaches at least two transmitter feed units, each operable to supply a conventional two-wire measuring instrument with electrical power.

ORDER

The Examiner's rejection of claims 1-12 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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